

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

PAUL KING and RITA SALAZAR,	)	
	)	
Appellants,	)	PCHE No. 88-59
	)	
v.	)	
	)	
PUGET SOUND AIR POLLUTION	)	FINAL FINDINGS OF FACT,
CONTROL AGENCY,	)	CONCLUSIONS OF LAW
	)	AND ORDER
Respondent.	)	

---

The matter, the appeal of a Notice and Order of Civil Penalty (No. 6805) for allegedly causing or allowing an outdoor fire containing prohibited materials, came on for formal hearing before the Pollution Control Hearings Board, Wick Dufford, presiding, on September 9, 1988, at Seattle, Washington. Board Member Judith A. Bendor has reviewed the record.

Appellants appeared pro se by Rita Salazar King. Respondent Puget Sound Air Pollution Control Agency (PSAPCA) was represented by

1 its attorney, Keith D. McGoffin. The proceedings were reported by  
2 Eugene Barker and Associates.

3 Witnesses were sworn and testified. Exhibits were examined.  
4 From the testimony heard and exhibits examined, the Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent PSAPCA is an activated air pollution control authority  
8 under chapter 70.94 RCW, the Washington Clean Air Act, with the  
9 responsibility for carrying out a program of air pollution prevention  
10 and control in a multi-county area, including the site of the incident  
11 in question in Kirkland, Washington.

12 II

13 Appellants are the owners of a single family dwelling at 12416  
14 N.E. 11th Place, Kirkland.

15 III

16 On March 22, 1988, at the rear of the property at 12416 N.E. 11th  
17 Place, two piles of materials were burned out of doors. Each pile was  
18 about 15 feet in diameter. Each contained tar paper roofing material,  
19 plastics, and trash. The piles were burned 15 to 25 feet from the  
20 house.

21 The Kirkland Fire Department arrived at the scene shortly after  
22 six in the evening. The fires were then ablaze, emitting thick black  
23 smoke. No one was present attending the fires. The firefighters were  
24 advised that the piles had been burning unattended for over two hours.

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
PCHB No. 88-59

Efforts to extinguish the fires with a garden hose proved unavailing. An engine company was summoned and put out the conflagration.

## III

The Kirkland Fire Department contacted PSAPCA about the incident and several days later (on March 25, 1988) PSAPCA's inspector visited the site and observed the extinguished piles and remnants of the debris they contained. Again no workers or owners were present at the site.

After ascertaining the identity of the owners from public record, the PSAPCA inspector mailed appellants a Notice of Violation on March 28, 1988, citing a violation of PSAPCA regulation I, Section 8.02(3), for the outdoor burning on March 22nd.

## IV

On April 26, 1988, PSAPCA issued Notice and Order of Civil Penalty No. 6805 in relation to the incident, assessing a fine of \$250. On May 10, 1988, appellants appealed the penalty to this Board.

**v**

Three or four months before the fires, appellants acquired the property through a foreclosure. The house was in poor condition and workers were hired to repair the roof and renovate the interior.

Appellants at no time occupied the home. Their plan was to fix it up for rental.

1 In the back yard the previous owners had left a varied assortment  
2 of debris. The clean up and renovation project involved hauling many  
3 loads of trash and construction scrap to the dump.

4 But in the interim the property was in disarray. The house was  
5 broken into. Graffiti were scrawled on the walls.

6 VI

7 By March the re-roofing was complete, though the debris it  
8 produced was still on hand. On the date of the fires, workers were at  
9 the house, sanding the floors. However, they had left long before the  
10 fire department arrived. They later denied starting the fires.

11 Exactly how the fires started remains unknown. But the debris  
12 piles were outdoors, in the open, readily accessible to anyone who  
13 might wander by. At the time of the fires, the owners, appellants,  
14 had not visited the property for perhaps two weeks.

15 VI

16 Any Conclusion of Law which is deemed a Finding of Fact is hereby  
17 adopted as such.

18 From these Findings of Fact the Board comes to these

19 CONCLUSIONS OF LAW

20 I

21 The Board has jurisdiction over the issues and parties. Chapters  
22 43.21B and 70.94 RCW.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

II

PSAPCA Regulation I, Section 8.02(3) reads:

It shall be unlawful for any person to cause or allow  
any outdoor fire: . . .

(3) containing garbage, dead animals, asphalt,  
petroleum products, paints, rubber products,  
plastics or any substance other than natural  
vegetation which normally emits dense smoke or  
obnoxious odors. (emphasis added)

This provision of the regulations essentially restates the explicit  
terms of the underlying statute. RCW 70.94.775.

III

We conclude that the fires on appellants' property on March 22,  
1988, violated Section 8.02(3). The fires contained prohibited  
materials.

IV

Property owners are prima facie responsible for unlawful fires on  
their property. Regulation I, Section 8.04(b). Owners might,  
however, be absolved of liability or have the penalty removed by  
proving that neither their actions nor their ownership are so  
connected with the unlawful fires as to be construed as "allowing"  
it. See Sprague v. SWAPCA, PCHB No. 85-69 (1985).

V

Normally a property owner is held responsible for unlawful fires  
started by trespassers, spontaneous combustion, or unknown causes.  
Davenport v. DOE, PCHB No. 79-208 (1980). Cathlamet v. SWAPCA, PCHB

1 No. 78-249 (1979). This is because, in the usual case, the property  
2 owner created a substantial risk that an unauthorized fire would  
3 occur. Property owners who leave unattended piles of burnable debris  
4 in circumstances which can be said to invite a fire to be started are  
5 held to have "allowed" such a fire. See Cummings, v. DOE, PCHB No.  
6 85-89 (1985); Kneeland v. OAPCA, PCHB No. 778 (1975).

#### 7 VI

8 Under all the circumstances here, we conclude that it is proper  
9 to hold appellants legally responsible for "allowing" the fires which  
10 occurred.

#### 11 VII

12 The Washington Clean Air Act is a strict liability statute and,  
13 therefore, a violator's state of mind or intentions are irrelevant to  
14 the question of liability.

15 RCW 70.94.431(1) authorizes the imposition of a civil penalty for  
16 violation of the Act or its implementing regulations "in an amount not  
17 to exceed one thousand dollars per day for each violation."

#### 18 VIII

19 The purpose of the civil penalty is not primarily retribution,  
20 but rather to influence behavior, both of the perpetrators and of the  
21 public at large.

22 Here appellants have no history of prior violations and it is  
23 unlikely that circumstances like those which produced the fire in  
24

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER

PCHB No. 88-59

1 question will occur again. They are not routinely involved in either  
2 building or burning.

3 However, we note that the penalty assessed here is considerably  
4 below the statutory maximum. Considering the size of the fires and  
5 the need to promote compliance generally, we do not believe that the  
6 penalty assessed here is unreasonable.

7 IX

8 Any Finding of Fact which is deemed a Conclusion of Law is hereby  
9 adopted as such.

10 From these Conclusions of Law the Board enters this  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER

PCHB No. 88-59

(7)

ORDER

The Notice and Order of Civil Penalty, No. 6805, is affirmed.

DONE this 15th day of December, 1988.

POLLUTION CONTROL HEARINGS BOARD

Wick Dufford  
WICK DUFFORD, Presiding

Judith A. Bendor  
JUDITH A. BENDOR, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER

PCHE No. 88-59

(8)